In the *Tout Court* of Shakespeare: Interdisciplinary Pedagogy in Law

Desmond Manderson

The Shakespeare Moot Project

A great civilization, said Robert Cover, is to be judged by the quality of its

law no less than its literature or engineering or science. In particular he meant by law a *nomos*, which is to say a way of being in the law experienced by

dential events such as the "courts of love" in medieval France[3]—emerged by and large as literatures in the first place (explicitly so in the case of the

the idea of law (or *droit* or *Recht*)—its genesis and evolution, its structures of reasoning and rhetoric, and the relationship of facts to texts to norms—

of the law *in* Shakespeare, an exercise in determining the law as it appears to

operate in those of the plays that have a strong legal component.[9] It was rather

a question of Shakespeare *as* law.[10] We were to proceed upon the assumption

takes place, different argumentative strategies, and so forth. It is my belief that

vised, although he did not actively participate in, the murder of many thousands of Jews from all over occupied Europe. Since 1951, however, he has lived

principles that will govern our relationship as judges with the authoritative

texts that constrain our authority: the collected plays of William Shakespeare.

Judicial Opinion of Manderson, J.

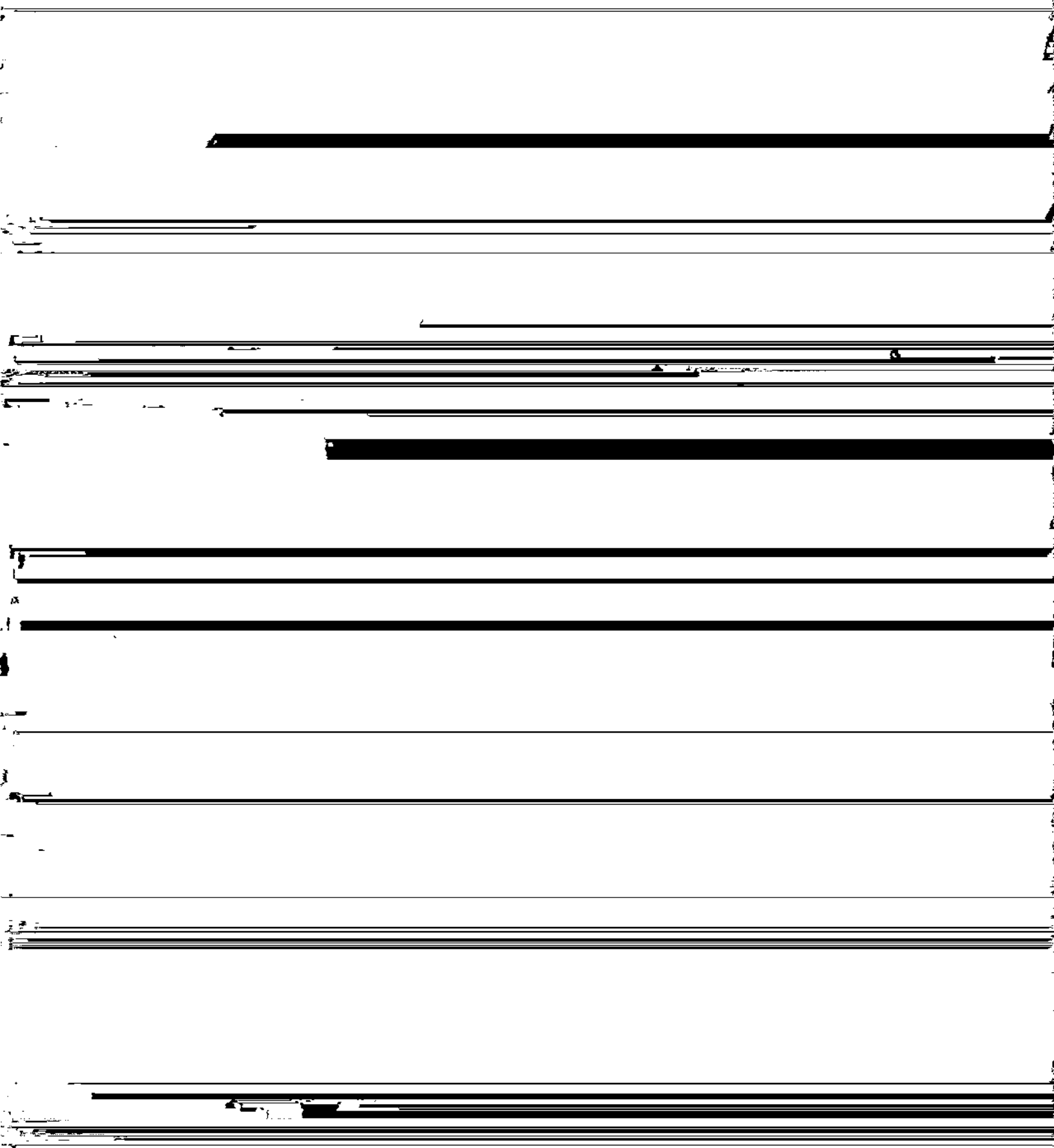
The question before us today pertains above all to identity and the sense in

judgment often gives rise to just such a presumption of authorization. The question for this legal system, as for any, is at what point there ceases to be a *good reason* to place our selfhood in escrow, whether the origin of the claim is a legal structure or otherwise.

Second, the respondents appeal to the passage of time since that war to suggest that Heinrich is no longer a man who can be punished for the past. The attorney general's decision is couched in terms of the age and ill health of

The question of identity is necessary in order to meaningfully undertake

into account in order to determine the meaning of the law of Shakespeare is the community of characters within the plays themselves.[25] In the first place this thought experiment asks us to treat Shakespeare's characters as if they



quality and care of our judgments. This task begins, above all, with the interpretive choices we make as a judiciary.

Where does this get us? It suggests an alternative interpretive model based

relevance. These are all variations on the theme of identity. Narrative is the

project by which this law will come to have an identity of its own. Responsibility is the project by which this law will seek to acknowledge the identity of its citizens. And relevance is the project by which we create an identity *between the two:* the *identification* of a legal system by and with a social community is what

is not the case: there is no "there" there. The history of the common law

larly significant precedent emerges only in the work of later judges, reading—and reading in—in novel contexts. Interpretation is archeology—in reverse.

Indeed, Dworkin's integrity fits much better with the law of Shakespeare than with the Anglo-American common law. In the first place, the common law as chain novel suffers from the undeniable difficulty that very many authors with profoundly different motives and ideas have contributed to it.

judgments about the other characters or scenes. In relation to the present legal question, it is evident that *Henry V* and *The Winter's Tale* meet this exacting criterion. In my judgment, it is to these plays that we ought to look to determine the law in this matter.

We cannot avoid, however, the problem of *choice of law,* as the comparativists put it. Each play refers to others, each law to another, and in this inherent conflict there is no foundation for the choice to be made between them. The undecidable is walled up there, impenetrable as Kafka's "gate of the law."

the values and principles that we believe those texts have themselves encouraged us to develop.

The third step is a matter of evaluating those moments of principle that seem to speak in two voices, both within and between plays. It is here that the idea of a narrative that speaks to a community of interpreters—us—and that allows us to see Shakespeare's project as embedded in our own, will assist us.

[redacted]

tolerably clear and in favor of the applicants. In *Richard III* it is no less the case that the violence authorized by the king is meant to be interpreted by the community who view it as a matter of condemnation and not by any means a demonstration of immorality or license. The idea of a narrative that binds *our* judgment to the action and language of the plays is precisely what allows us to judge characters as having behaved wrongly, or to read certain speeches

[redacted]

The jurisprudence of *Henry V* is more difficult to decide. Henry's power as a king—including the powers of cruelty and of conquest—is skeletal to the play's narrative form, and it is on this point that the arguments of applicant and respondent differed substantially. One side presses Henry's apparent

[redacted]

conditions is built into the very structure of the play. It is dramatized most

law of Shakespeare as it emerges, in different ways, from *The Winter's Tale,*

was no lawful authority.[44]

The second law of Shakespeare is this: form and content ought agree. The

satisfied with the thin claims and assertions about human nature that one finds in less fortunate jurisdictions.

The problem with the plea of mercy, as I see it, is not that Portia's commitment to it falters. It is rather that mercy is essentially positioned as a conse-